

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CITGO PETROLEUM CORPORATION,

Plaintiff,

v.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND,

Defendant.

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CIVIL ACTION NO.:

**DEFENDANT FIDELITY AND DEPOSIT COMPANY
OF MARYLAND'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Fidelity and Deposit Company of Maryland ("F&D") hereby removes this lawsuit from the 334th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and would respectfully show the Court as follows:

**I.
PARTIES**

1. Plaintiff CITGO Petroleum Corporation ("CITGO") is a corporation, having been incorporated in the state of Delaware, with its principal place of business in Houston, Texas. For purposes of diversity of citizenship, CITGO is a citizen of Delaware and Texas, and is not a citizen of Maryland or Illinois.

2. Defendant F&D is a corporation, having been incorporated in the state of Maryland, with its principal place of business in Schaumburg, Illinois. For purposes of diversity of citizenship, F&D is a citizen of Maryland and Illinois, and is not a citizen of Delaware or Texas.

II.
PROCEDURAL BACKGROUND

3. On March 11, 2016, CITGO filed against F&D that certain lawsuit styled *CITGO Petroleum Corporation v. Fidelity & Deposit Company of Maryland*, Cause No. 2016-16171, in the 334th Judicial District Court of Harris County, Texas (the “State Court Lawsuit”).

4. F&D was first served with Plaintiff’s Original Petition and Request for Disclosure (the “Petition”) in the State Court Lawsuit on March 16, 2016.

III.
NATURE OF ACTION

5. CITGO entered into a Marketer Franchise Agreement (the “MFA”) with Gas-Mart USA, Inc. (“Gas Mart”), pursuant to which Gas-Mart agreed to purchase gasoline from CITGO.

6. Thereafter, F&D issued that certain Surety Bond No. 09159686 (the “Bond”), in which it agreed that, if Gas-Mart defaulted under the MFA by failing to remit payment for gasoline, F&D would pay CITGO such amounts, up to the Penal Sum of the Bond.

7. CITGO alleges that Gas-Mart has failed to pay CITGO certain amounts for gasoline purchases, and it seeks a declaratory judgment that F&D is obligated under the Bond to pay CITGO the sum of \$743,532.63. F&D has paid CITGO for all amounts owed under the Bond, but is unwilling to pay CITGO for the additional amounts demanded by CITGO because they are not due under the Bond. Thus, a justiciable controversy exists between F&D and CITGO.

IV.
BASIS FOR REMOVAL

8. The State Court Lawsuit is removable pursuant to 28 U.S.C. §§ 1441(a)-(b) and 28 U.S.C. § 1332(a)(1). This lawsuit is a civil dispute between citizens of different states. There is, and was at all relevant times (including the time of the filing of the State Court Lawsuit, service of the Petition, and the filing of this Notice of Removal), complete diversity of citizenship between the parties.

9. The amount in controversy in this lawsuit exceeds \$75,000, exclusive of interest and costs, as evidenced by paragraphs 22, 25, and-26 of the Petition, included with **Exhibit A**, attached hereto and incorporated herein by reference. In its Petition, CITGO alleges that it notified F&D of Gas-Mart's breach of the MFA, that it demanded performance under the Bond and demanded payment from F&D in the amount of \$743,532.63, and that "F&D is obligated to pay CITGO \$743,532.63." As a result, CITGO seeks a declaratory judgment that the Bond obligates F&D to pay CITGO actual damages of \$743,532.63. CITGO also seeks to recover its reasonable attorneys' fees. Thus, CITGO has asserted a specific claim for monetary relief in excess of the minimum jurisdictional amount of \$75,000, exclusive of interest and costs.

V.
VENUE

10. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the district and division of this Court embrace Harris County, Texas, the place where CITGO filed its State Court Lawsuit, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the alleged events or omissions giving rise to CITGO's claims occurred in Harris County, Texas.

VI.
COMPLIANCE WITH REMOVAL REQUIREMENTS

11. This Notice of Removal is timely filed under 28 U.S.C. §§ 1446(a)-(b). This Notice of Removal is filed within thirty days of March 16, 2016, the date F&D was first served with process and first received a copy of the Petition in the State Court Lawsuit, the initial pleading setting forth the claim for relief upon which this action is based. This Notice of Removal is also filed within one year of the filing of the Petition on March 11, 2016.

12. CITGO filed the Petition in the 334th Judicial District Court of Harris County, Texas, as Cause No. 2016-16171. In accordance with 28 U.S.C. § 1446(d), written notice of this Notice of Removal will be promptly given to CITGO, through its counsel of record, and a copy of this Notice of Removal will be filed with the clerk of the 334th Judicial District Court of Harris County, Texas, where the State Court Lawsuit is pending.

13. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, the following items are filed simultaneously herewith and incorporated herein by reference: (1) all pleadings orders, and other matters filed in the State Court Lawsuit (**Exhibit A**); (2) all executed process in the State Court Lawsuit (**Exhibit B**); (3) the state court docket sheet (**Exhibit C**); (4) an Index of Matters Being Filed (**Exhibit D**); and (5) a List of All Counsel of Record (**Exhibit E**).

14. By filing this Notice of Removal, F&D does not intend to waive any defenses it may have to CITGO's claims.

Wherefore, Defendant Fidelity and Deposit Company of Maryland requests that this Court accept jurisdiction over this lawsuit for the reasons set forth above, and grant

it such other and further relief, both at law and in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Michael Keeley

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ATTORNEYS FOR DEFENDANT
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MARYLAND

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Removal has been served on all counsel listed below on this the 7th day of April, 2016, via certified mail, return receipt requested.

Aaron R. Crane
Robert L. Pillow
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Houston, TX 77002

/s/ Andrew F. Carter

Andrew F. Carter